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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,133	11/14/2003	Tsuyoshi Ohyama	09792909-5730	3928
26263 7590 10/20/2009 SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, WILLIS TOWER CHICAGO, IL 60606-1080				
EXAMINER SCHECHTER, ANDREW M				
ART UNIT 2883		PAPER NUMBER		
MAIL DATE 10/20/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/714,133

Applicant(s)

OHYAMA ET AL.

Examiner

ANDREW SCHECHTER

Art Unit

2883

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 18-20.
Claim(s) withdrawn from consideration: 8-10 and 23-45.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Andrew Schechter/
Primary Examiner, Art Unit 2883

Continuation of 3. NOTE: The proposed amendments would change the scope of the claims, requiring further search and/or consideration.

The amendment to line 6 would overcome the previous objection to claim 18.

The amendments to recite "a first substrate positioned opposite a second substrate" and "forming an alignment film on the first substrate" would be rejected as previously, with the substrates in Roosendaal being inherent as discussed in the rejection and with the top side substrate being identified as the first substrate.

The amendment that "displayed images are viewable on said first substrate" would be rejected in view of Roosendaal, since the reflected light shown in Fig. 1 and the transmitted light shown in Fig. 1 produce displayed images which are viewable on the top side substrate.

However, the proposed amendment changing "forming a retardation film on the alignment film on only one of the substrates" to "forming only one retardation film on the alignment film" would require further search and/or consideration.

The applicant argues that this claim language distinguishes the claimed invention over Roosendaal due to Roosendaal's "another optical foil on a second substrate" [see the first and second pages of Remarks]. This is not persuasive. First, the proposed language is plain, requiring "only one retardation film on the alignment film" - it most certainly does not exclude other retardation films elsewhere in the device. Second, as discussed previously [see pp. 2-3 of the office action of 8 July 2009, for instance], Roosendaal's "another optical foil" is explicitly stated to be optional, and the applicants have made no persuasive argument that this disclosure/teaching of Roosendaal should be ignored.

Nonetheless, the proposed claim language may arguably distinguish over Roosendaal for reasons not argued by the applicant. Specifically, Roosendaal discloses that in a preferred embodiment the optical foil 16a is "a wide band quarterwave foil, essentially comprising a quarterwave and a halfwave retarder". It could be argued, then, that Roosendaal discloses forming two retardation films (one quarterwave and one halfwave) on the alignment film, which taken together function as a single quarterwave retardation film. This argument does not appear to be persuasive to the examiner, but the proposed amendment would at least confuse matters, requiring consideration and discussion of whether a laminated stack of retardation films acting as a single film would be considered to be within the scope of "only one retardation film on the alignment film", and possibly require 112, 2nd paragraph rejections of the claim language (both to address the lack of clarity regarding laminated films and due to the applicant's apparent belief that the optical foil on the other substrate is relevant to the "only one retardation film on the alignment film", suggesting that the examiner and applicant have different interpretations of the claim language). The proposed amendment will therefore not be entered.